

UNITED STATES BANKRUPTCY COURT
For The Western District of Michigan

in the matter of:

CYNTHIA HILLER
966 Timber Winds, S.W.
Grand Rapids MI 49544

Debtor.

Case Number: GG 05-20762
Chapter Seven (7) Filed: 10-16-05
Honorable James D. Gregg
James W. Hoerner, Trustee

Notice to Creditors and Other Parties in Interest

YOU ARE HEREBY NOTIFIED THAT A **HEARING will** be held at the United States Bankruptcy Court, One Division Avenue, N.W., Third Floor, Courtroom B, **Grand Rapids, Michigan on Wed., July 12, 2006 at 1:30 p.m.** to consider & act upon the following matter:

Trustee's Motion to Sell Interest of Debtor & Co-Owner in Debtor's Residence Free & Clear of Liens & for Partial Disbursement of Sale Proceedings

a copy of motion is enclosed

If you want the court to consider your views on this matter, attend the hearing on the date stated above.

Your rights may be affected. You should read the documents carefully and discuss them with your attorney. (If you do not have an attorney, you may wish to consult one.)

You or your attorney may wish to file a response to the motion explaining your position. Any response shall be filed with the clerk of the U.S. Bankruptcy Court, One Division Avenue, N.W., Room 200, Grand Rapids MI 49503, and should be received by the clerk at least 3 (three) days before the hearing date. A copy of your response should also be mailed upon the party filing the motion and his/her attorney.

If you or your attorney do not take these steps, the court may decide to grant the relief sought in the motion or petition, and may enter an order granting the relief requested.



Daniel M. LaVille, Clerk of Court

David G. Scalici, Deputy Clerk
Dated: 6-14-06

NOTICE IS HEREBY GIVEN THAT THE COURT MAY, in its discretion, orally continue or adjourn the above hearing on the record in open court. If this occurs, parties in interest will not be given further written notice of the continued or adjourned hearing. If an entity is not present at the originally scheduled hearing, information regarding the time, date and place of an orally continued or adjourned hearing may be obtained at the clerk's office from the court files or docket.

A copy of this notice & motion forwarded to noticing center for service.
Court to Serve Official Buyer's List.

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

In the Matter of:

Cynthia Hiller,

Debtor.

Case No. GG 05-20762

(Chapter 7)

Filed: October 16, 2005

**TRUSTEE'S MOTION TO SELL INTEREST OF DEBTOR AND CO-OWNER
IN DEBTOR'S RESIDENCE, FREE AND CLEAR OF LIENS, AND
FOR PARTIAL DISBURSEMENT OF SALE PROCEEDS**

NOW COMES JAMES W. HOERNER, Chapter 7 Trustee herein, by and through his attorneys, Day & Sawdey, P.C., pursuant to Bankruptcy Code § 363 and Federal Rules of Bankruptcy Procedure 2002 and 6004, and shows unto this Court as follows:

1. Your Movant is the duly-appointed, qualified and acting Chapter 7 Trustee in the above-entitled case, which was commenced by the Debtor through the filing of a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on October 16, 2005.

2. Included among the assets herein is the Debtor's residence (the "residence") commonly known as 966 Timber Winds, S.W., Grand Rapids, Michigan 49544, which property is legally described as:

Unit 17, Serenity Ridge, a Site Condominium according to the Master Deed recorded in Liber 4352, Pages 959 through 1006 inclusive, and First Amendment recorded in Liber 5070, Pages 186 through 208 inclusive, in the Office of the Kent County Register of Deeds, and designated as Kent County Condominium Subdivision Plan No. 416, together with rights in general common elements and limited common elements as set forth in said Master Deed and as described in Act 59 of the Public Acts of 1978, as amended.

PPN: 41-13-32-327-017

3. The above-described property is owned by the Debtor and her non-debtor spouse, Robert C. Hiller, as tenants by the entireties.

4. The Trustee has recently listed this property for sale with Craig Dunlap & Associates for a listing price of \$439,900. It was previously listed for sale with Keller Williams Realty for \$479,900 and was on the market for over 400 days, without any type of offer being made thereon, whatsoever. Therefore, even though the Debtor has scheduled this property as having a value of \$551,400, based upon doubling the SEV figure, the Trustee believes that, in current "soft" market conditions, and the unique design of this home, such value(s) are grossly overstated.

5. PCH Holdings, LLC, of 6917 Kalamazoo Ave., S.E., Grand Rapids, Michigan 49548, has offered to purchase the Debtor's residence, as above described, for the sum of \$400,000, pursuant to the terms of a West Michigan Regional Purchase Agreement (the "Purchase Agreement"), a copy of which is on file with this Court and available for examination by an interested party between the hours of 8:00 a.m. and 4:00 p.m. Monday – Friday. The sale of such residence will be made pursuant to the terms thereof, as well as the terms recited herein. To the extent that there is a conflict in such provisions, the terms of this Motion will prevail.

6. The proposed purchaser has no known relationship to the Trustee or his attorneys, to the Debtor or her spouse, to the Bankruptcy Judge who might approve such proposed sale, nor any person affiliated with the Office of the United States Trustee.

7. As evidenced by his signature on the West Michigan Regional Purchase Agreement, the Debtor's spouse, Robert C. Hiller, has agreed to a sale thereof pursuant to the terms described in such Purchase Agreement. Therefore, the Trustee will be selling the interest of the Debtor and the co-owner, Mr. Hiller, inasmuch as he has consented to the same, per 11 USC § 363(f)(2) and (h), and there is no need to commence an adversary proceeding to allow such a sale per Federal Rule of Bankruptcy Procedure 7001(3).

8. The above-described residence was, allegedly, subject to a first lien in favor of Flagstar Bank to secure payment of the sum of approximately \$317,000. However, Flagstar Bank never recorded its mortgage against such property and, therefore, its interest in the same, as to the Debtor's interest, is subject to and subordinate to the interest of the Trustee therein, as a hypothetical lien creditor, under Bankruptcy Code §

544(b). As this mortgage lien was not recorded, Flagstar Bank's interest in the Debtor's interest in such property is in bona fide dispute and, therefore, the Trustee can sell said property, free and clear of liens, pursuant to 11 USC § 363(f)(4). As to Mr. Hiller's interest, the mortgage is valid and partial payment will be made thereon as provided below.

9. As the Debtor had voluntarily transferred her interest in such property to Flagstar Bank, her amended claim of exemptions against said residence in the amount of \$30,000 may be inappropriate and is otherwise disallowed pursuant to the provisions of 11 USC § 522(g), which provisions are self-effectuating.

10. All real property taxes and assessments due in 2005 and before are Seller's responsibility. Real property taxes and assessments due for 2006 will be pro-rated to the date of closing on a calendar-year basis, with the Seller being responsible for the portion of taxes and assessments due from January 1, 2006 to the closing date. The balance of the taxes and assessments for 2006 are Buyer's responsibility.

11. Out of the sale proceeds, the Trustee proposes to disburse the following amounts to the following parties at the time of closing on such sale:

- a. Payment for the premium for a standard ALTA owner's policy of title insurance in the amount of the purchase price.
- b. Payment of real estate taxes and assessments, as described above.
- c. Payment of real estate transfer taxes and revenue stamps due on such sale.
- d. Payment of a real estate sales commission to Craig Dunlap & Associates of seven percent (7%) of the purchase price, or \$28,000, based upon a sales price of \$400,000.
- e. Payment of one-half (1/2) of all closing costs and all miscellaneous recording costs attributable to Seller.
- f. Payment of one-half (1/2) of the amount owed to Flagstar Bank on its mortgage held against the interest of Robert C. Hiller; i.e., approximately \$158,500.
- g. Payment to Robert C. Hiller of the balance (if any) of his one-half of the net sale

proceeds.

After payment of the aforesaid amounts, the balance of the sale proceeds will be held by the Trustee pending further order of this Court, including determination as to the allowance/payment on the Debtor's amended claim of exemptions and how much should be paid on the Flagstar Bank mortgage as against the interest of Debtor therein, as well as to other creditors who have filed claims.

12. Prospective buyers may make arrangements for examination and inspection of this property by contacting Trustee's counsel at the address and telephone number which appears at the foot of this Motion.

13. The sale of this property shall be made on an "AS-IS, WHERE-IS" basis, without representation or warranty, express or implied, of any kind, nature or description including, without limitation, any warranty by description or of merchantability, usability, habitability, or of fitness for any particular purpose. The Seller shall not be required to inspect or test or report on the condition of the property being sold, or of the existence of any possible defects in the same, except as may be required by law, and any defects which may be revealed by a commitment for title insurance. As the Seller has not resided in the residence, he shall not be compelled to provide a lead paint disclosure statement or seller's disclosure statement.

14. Except for easements and restrictions of record, including restrictions as set forth in the Condominium By-Laws and related documents, the residence shall be sold free and clear of liens or claims thereon, with the interest of any party asserting a lien or claim against the residence being removed therefrom and attaching to the sale proceeds in the same order of rank, validity and priority as they presently may exist against such property.

15. The Trustee shall convey his interest in the residence to the Buyer by way of a Trustee's Deed, which is in the nature of a Quit-Claim Deed. Likewise, his interest in the attached personal property shall be conveyed by a suitable Trustee's Bill of Sale. Neither the Trustee's Deed nor the Trustee's Bill of Sale shall contain any warranty language.

16. Any costs for tests or inspections requested or desired by Buyer shall be borne and otherwise paid

by Buyer, at Buyer's expense. These include, but are not limited to, a survey, pest inspection, building inspection, well/septic inspection, percolation test, radon test, or any other inspections of any nature.

17. The property shall be offered for sale in one (1) lot, on a cash basis, with bids commencing at the amount of the offer of PCH Holdings, LLC; i.e., \$400,000. Thereafter, bids will be taken in increments of no less than \$5,000, with the initial offer to be at least \$410,000. Contingent bids will not be received. Before the Trustee will accept higher and competing offers, however, he will require any potential bidder to provide proof of their financial ability to make an offer of \$410,000 or more by way of a bank letter of credit or similar document.

18. After the sale has been approved by the Bankruptcy Court, the Buyer shall, within three (3) business days, sign a Buy/Sell Agreement in accordance with the terms recited herein, or an Addendum to the Purchase Agreement if PCH Holdings, LLC is the successful bidder, but for a higher purchase price, as the case may be.

19. The Buyer shall be required to deposit with the Trustee the sum of One Thousand Dollars (\$1,000), representing an earnest money deposit against the purchase price, immediately after the sale is orally confirmed by the Bankruptcy Court. Such earnest money deposit is subject to forfeiture, as Seller's liquidated damages, if closing does not occur due to the fault of the Buyer. If Seller cannot seasonably close, then Buyer's earnest money deposit shall be returned and Buyer shall have no further claims against Seller or this estate. The balance of the purchase price is to be paid at a closing to be scheduled as soon thereafter as is practicable. It is anticipated that closing will take place by no later than July 15, 2006, unless extended pursuant to agreement of the parties.

20. Occupancy and use of the subject property will be delivered to the Buyer at the time of closing.

21. All expenses of custody, protection and insurance of this property, as well as the expenses of sale, including administrative and all legal expenses of the bankruptcy proceeding relating to the protection and sale of said real property shall be charged against the sale proceeds with priority over all claims, save for

those identified in paragraph 11. above, upon which distributions are to be made, per 11 USC § 506(c).

22. Your movant believes that the sale of such residence, as aforesaid, or to a higher bidder on such terms, is in the best interests of the creditors in this estate and should be approved.

WHEREFORE, YOUR MOVANT PRAYS that creditors herein and other interested parties be required to object or otherwise show cause, on a time and date certain, why the above-described residence should not be sold, as aforesaid, to PCH Holdings, LLC, or to such other party who might submit a higher bid thereon; why the Trustee should not be allowed to disburse, out of the sale proceeds at closing, the amounts recited above, together with any applicable interest or penalties thereon; why he should not be allowed to sign the Purchase Agreement and any other necessary closing documents including, but not limited to, a Trustee's Deed, Trustee's Bill of Sale, and Closing Statement; and why he should not have such other and further relief as this Court might deem just, equitable and proper.

Dated: June 14, 2006

DAY & SAWDEY, P.C.
Attorneys for Trustee

By _____/s/_____
Larry A. Ver Merris (P-29093)
Business Address:
825 Parchment Drive, S.E., Suite 100
Grand Rapids, MI 49546-2365
Telephone: (616) 975-9951

LAVM/mld
LAVHILLER 5621 (Cynthia)001
PLD TRUST MOT TO SELL INT. IN RESIDENCE 6-12-06.doc